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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jerome M. Skrtich, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

Pinnacle West Capital Corporation, et
al.,

Defendants.

No. CV-2:22-01753-SMB

CLASS ACTION

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

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1 Plaintiffs Jerome M. Skrtich, Joseph F. Peck, and Michael Riccitelli respectfully
 2 move for an order preliminarily approving a class action settlement agreement they reached
 3 concerning the claims in this case, approving notice to the class, and setting a date for a
 4 fairness hearing.¹ Specifically, Plaintiffs ask the Court to: (1) preliminarily approve the
 5 proposed Settlement; (2) preliminarily certify the Settlement Class; (3) approve the
 6 proposed form and method of notice to the Class; and (4) schedule a hearing at which the
 7 Court will consider whether to grant final approval of the Settlement.

8 **I. INTRODUCTION**

9 The proposed Settlement is an excellent result for the Class. The Settlement's present
 10 value is \$7 million, which is approximately 1/3 of the \$21,067,227 in class-wide damages
 11 calculated by Plaintiffs' actuarial expert. The Settlement will increase the amount that Class
 12 Members receive in their monthly pension checks for the rest of their lives.

13 The Employee Retirement Income Security Act of 1974 ("ERISA") requires that
 14 joint and survivor annuities ("JSA"), a benefit form which provides benefits for the lives of
 15 plan participants and their spouse, be "actuarially equivalent" to the single-life annuity
 16 ("SLA") offered to the participant. In this case, Plaintiffs alleged that Pinnacle West Capital
 17 Corporation ("Defendants")² violated ERISA's requirement because the Pinnacle West
 18 Capital Corporation Pension Plan (the "Plan") did not provide actuarially equivalent JSAs
 19 to retirees. Plaintiffs alleged Defendants are underpaying retirees receiving JSAs.

20 The proposed Settlement's value must be considered in light of the substantial
 21 litigation risks in this complex case. Plaintiffs' legal theory has not been litigated through
 22 trial in any case to date. While there are three pending appellate cases involving Plaintiffs'
 23 legal theory, *see Drummond v. Southern Container Co.*, No. 24-12773 (11th Cir. Aug. 28,
 24 2024); *Reichert v. Kellogg Co.*, 24-1442 (6th Cir. May 17, 2024); and *Watt v. FedEx Co.*,
 25 No. 24-5945 (6th Cir. Oct. 17, 2024), there are no appellate decisions directly on point. Few

26 ¹ Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in
 27 the Parties' Settlement Agreement.

28 ² Plaintiffs also brought claims against the Benefit Administration Committee of the Capital West
 Corporation Retirement Plan.

1 cases involving Plaintiffs’ legal theory have resulted in a class-wide settlement. Plaintiffs’
 2 ability to prevail in this case hinges on which assumptions generate actuarially equivalent
 3 benefits for Class members, an issue the Parties’ experts vigorously disputed. Accordingly,
 4 success at trial would depend on Plaintiffs winning a “battle of experts” in a highly technical
 5 field. For these reasons, and others discussed in more detail below, the Settlement satisfies
 6 Rule 23’s criteria for preliminary approval, and Plaintiffs request that the Court grant this
 7 motion.

8 Other district courts have approved class action settlements involving materially
 9 identical claims under very similar terms as the Settlement in this case. In *Berube v.*
 10 *Rockwell Automation, et al*, Case No. 2:20-CV-01783 (E.D. Wis. Mar. 8, 2024) and
 11 *Holloway et al. v. Kohler Co. et al*, Case No. 2:23-cv-01242 (E.D. Wis. Dec. 12, 2024), the
 12 courts certified settlement classes, approved counsel here as class counsel in those cases,
 13 found the settlements to be fair, reasonable, and adequate, and awarded attorneys’ fees,
 14 reimbursement of expenses and payment of case contribution awards. *Berube* at Dkt. 90
 15 (“*Berube Order*”); *Holloway* at Dkt. 44 (same). Similarly, in *Urlaub et al v. Citgo Petroleum*
 16 *Corp. et al.*, Civil Action No. 21-cv-4133, Dkt. No 175 (N.D. Ill. Jan. 27, 2025) (“*Urlaub*
 17 *Approval*”), the court approved a settlement involving substantially identical claims. *See*
 18 *also McFadden, et al, v. Sprint Communications, LLC*, Case No. 22-2464, Dkt. 46 (D. Kan.
 19 Aug. 21, 2024) (“*Sprint Approval*”); *Cruz v. Raytheon*, No. 19-11425, Dkt. 113 (D. Mass.
 20 June 11, 2021) (*Cruz Final Order and Judgment*). Plaintiffs seek the same relief here as the
 21 courts in *Berube*, *Holloway*, *Urlaub*, *McFadden* and *Cruz* awarded.

22 II. BACKGROUND

23 Plaintiffs filed an Amended Complaint on December 9, 2022, on behalf of
 24 participants and beneficiaries receiving pension benefits in the form of a JSA from the Plan.
 25 *See* Dkt. 17. Plaintiffs alleged that ERISA requires that JSAs be at least the “actuarially
 26 equivalent” of the SLA the participant could have selected when he or she began receiving
 27 benefits. *Id.* ¶¶ 20-23. Two benefit forms are “actuarially equivalent” when they have the
 28

1 same present value, calculated using the same, reasonable actuarial assumptions. *Id.* at ¶¶
2 29-35.

3 The central actuarial assumptions used to determine actuarial equivalence are
4 mortality and interest rates. A mortality assumption estimates how many benefit payments
5 will be made, based on the ages of the participant and (in the case of JSAs), the beneficiary.
6 *Id.* at ¶ 4. An interest rate assumption discounts the value of expected future payments. *Id.*
7 at ¶ 5. The amount of a JSA benefit is lower than the amount of an SLA benefit to account
8 for the possibility that the beneficiary will receive benefits after the participant's death. *Id.*
9 at ¶ 3. But the two forms of benefits must have the same present value to be actuarially
10 equivalent. *Id.*

11 Plaintiffs alleged that Defendants calculated their JSA benefits (and the JSAs of
12 other Class Members) using outdated mortality and interest rate assumptions which caused
13 their monthly benefit to be less than an “actuarially equivalent” amount. *Id.* at ¶¶ 61-69. In
14 other words, Plaintiffs allege that the present values of Class Members' JSA benefits were
15 less than the present values of the SLAs they could have selected and that the present values
16 would have been equal had Defendants reasonable assumptions to calculate Class
17 Members' JSAs.

18 **III. PROCEDURAL BACKGROUND**

19 On October 13, 2022, Plaintiffs filed this class action. Dkt. 1. On November 1, 2022,
20 the Parties filed a joint motion to extend the time for Defendants to respond to Plaintiffs'
21 complaint, which the Court granted, and on December 9, 2022, Plaintiffs filed their First
22 Amended Complaint. Dkt. 14, 15, 17.

23 Defendants filed a Motion to Dismiss on December 23, 2022, which sought to
24 dismiss all claims. Dkt. 19. Plaintiffs filed their opposition to the Motion to Dismiss on
25 February 3, 2023, Dkt. 23, and Defendants filed a reply on February 24, 2023. Dkt. 25. The
26 Court held a hearing on the motion on August 3, 2023, Dkt. 28, and on August 7, 2023, the
27 Court denied the motion with respect to Plaintiffs' first claim for violation of 29 U.S.C. §
28

1 1055(d)'s actuarial equivalence requirement, but dismissed Plaintiffs' second claim for
2 breach of fiduciary duty. Dkt. 29.

3 On August 21, 2023, Defendants filed their Answer to Plaintiffs' First Amended
4 Complaint and a partial motion for reconsideration, seeking reconsideration to the extent
5 that the Court denied their Motion to Dismiss. Dkt. 33, 34. On August 22, 2023, the Court
6 Ordered Plaintiffs to file a response to Defendants' motion, which Plaintiffs filed on
7 September 9, 2023. Dkt. 35, 38. The Court denied Defendants' motion for reconsideration
8 on November 16, 2023. Dkt. 41.

9 While Defendants' motion for reconsideration was pending, the Parties engaged in
10 a Rule 26(f) conference, filing their 26(f) report on August 30, 2023. Dkt. 36. The Court
11 then issued its Case Management order on August 31, 2023. Dkt. 37. Over the next six
12 months, the Parties engaged in substantial discovery, with the Court granting the Parties'
13 request to extend discovery deadlines due to the volume of materials produced. Dkt. 46.
14 Defendants produced, and Plaintiffs reviewed, over 40,000 pages of documents.
15 Declaration of Douglas P. Needham ("Needham Decl.") at ¶ 7. During the discovery
16 process, the Parties had a discovery dispute requiring the Court's intervention and the Court
17 held a discovery conference on June 11, 2024. Dkt. 48, 53.

18 The Parties then completed fact discovery with depositions: Plaintiffs took 30(b)(6)
19 depositions of Defendants over two deposition days and took depositions of two fact
20 witnesses. Each Plaintiff also sat for a deposition. Needham Decl. at ¶ 7. Thereafter, the
21 Parties proceeded to expert discovery, each serving their expert reports on September 27,
22 2024 and their expert rebuttal reports on November 13, 2024. Needham Decl. at ¶ 8.
23 Plaintiffs deposed Defendants' expert on December 17, 2024, and Defendants deposed
24 Plaintiffs' expert on December 19, 2024. Needham Decl. at ¶ 8.

25 Plaintiffs moved for Class Certification on January 17, 2024. Dkt. 62. Defendants
26 filed their opposition to class certification on February 28, 2025, and Plaintiffs filed their
27 reply on April 11, 2025. Dkt. 64, 67. Defendants moved for leave to file a sur-reply in
28 opposition to the motion for class certification on April 21, 2025. Dkt. 68, 69.

After the briefing on class certification was complete, the Parties engaged in mediation before the Hon. Judge Morton Denlow through JAMS on April 22, 2025. Needham Decl. at ¶ 14. The Parties were unable to reach an agreement after their all-day mediation session. *Id.* But at the end of the session, Judge Denlow offered a mediator's proposal, and on April 24, 2025, the Parties both accepted. *Id.* Over the next few days the Parties worked to finalize their settlement term sheet, which was completed on April 30, 2025. On May 1, 2025, the Parties informed the Court of their agreement to settle the case. Dkt. 70.

IV. TERMS OF THE PROPOSED SETTLEMENT

The Settlement is attached to the Needham Declaration as Exhibit A, and the material terms are summarized below:

A. Class

The Class is a non-opt out class defined as:

[A]ll participants in and beneficiaries of the Pinnacle West Capital Corporation Retirement Plan (the "Plan") who began receiving a JSA or QPSA after November 1, 2016 through the date of entry of the Preliminary Approval Order.

B. Plan Amendment

Within ninety (90) days after of when the Final Approval Order becomes "Final," Defendants will amend the Plan to provide that each Class Member is entitled to an increased monthly benefit in the same form they are receiving as of December 31, 2025. Settlement, §§ 1.43 and 3.2. The Plan Amendment will allocate the Net Settlement Amount, i.e. \$7 million minus any amounts the Court awards as attorneys' fees, expenses or case contribution awards, among Class Members in proportion to their alleged losses. Settlement, § 3.3. The Plan Amendment will be effective for payments to Class Members on or after January 1, 2026. Settlement, § 3.2.

C. Calculation of Monthly Benefit Increases

Class Members will receive an increase to their monthly benefits in accordance with the following steps. First, the Claimed Additional Value Amount will be calculated for each

1 Class Member, measured by the difference in present value between the JSA benefit they
2 received and the present value of the benefit they would have received using the
3 assumptions proposed by Plaintiffs' expert. Settlement, §§ 3.3.1, 3.3.2 and 3.3.3. Interest
4 will be included in the Claimed Additional Value Amount starting from when the Class
5 Member started receiving benefits to account for the fact that Class Members have been
6 receiving the claimed lower benefit amounts for different lengths of time. Settlement, §
7 3.3.3.

8 Second, a Settlement Percentage is calculated for each Class Member to measure
9 their loss relative to all other Class Members. Settlement, § 3.3.4. This is done by dividing
10 the Class Member's Claimed Additional Amount by the total Claimed Additional Value
11 Amounts for all Class Members. Third, each Class Member's Settlement Percentage is
12 multiplied by the Net Settlement Amount, the \$7 million provided by the Settlement minus
13 any Attorneys' Fees, Litigation Expenses and Case Contribution Awards the Court awards.
14 Settlement, § 3.3.5. In simple terms, this step allocates the Settlement proceeds to each
15 Class Member in an amount proportional to the Class Member's claimed loss.

16 Fourth, each Class Member's settlement allocation is annuitized, i.e., converted from
17 a single dollar amount into an annuity, in the form of benefit they are currently receiving.
18 Settlement, § 3.3.6. This amount is then added to the current monthly amount that Class
19 Members are receiving.

20 **D. Timing of Benefit Increase**

21 The Plan Amendment shall provide that any increase in benefits will begin being
22 paid no later than the first day of the first calendar month that is at least one hundred and
23 twenty (120) days after the Settlement Effective Date (the "Benefit Increase Payment
24 Date"), and shall include a lump sum equal to the sum of such Monthly Benefit Increases
25 due from January 1, 2026, until the Benefit Increase Payment Date. Settlement, § 3.2.

26 **E. Calculation of Benefits Upon the Death of a Participant Class Member**

27 Upon the death of a Participant Class Member, the amount of the survivor annuity
28 payable to the Participant Class Members' beneficiary, if any, shall be determined using the

1 Class Members' Recalculated Benefit Amount in a manner consistent with the terms of the
 2 Plan. Where the Participant and spouse have both died, upon filing of an Estate Claim Form,
 3 the Estate will receive a lump sum payment. Settlement, §§ 3.3.7, 3.9.

4 **F. Release**

5 Upon entry of the Judgment by the Court, Plaintiffs and each Class Member will be
 6 deemed to forever release and discharge Defendants and the Related Parties from any and
 7 all Claims arising on or before the Settlement Effective Date (1) that were brought, or could
 8 have been brought (whether known or unknown, suspected or unsuspected, foreseen or
 9 unforeseen), arising out of or relating to the allegations in the Complaint or Amended
 10 Complaint, or (2) relating to the actuarial assumptions or factors used by the Plan to
 11 calculate benefits (collectively, the "Released Claims"). Settlement, § 4.1.1.

12 This release is limited to only those claims which could have been brought in this
 13 action, and appropriately tailored to the case.

14 **G. Notice and Administration**

15 After the entry of the Preliminary Approval Order, Defendants will provide notice
 16 to Class Members of the proposed Settlement. Defendants will transmit the Notice by first
 17 class mail to the Class Member's address maintained in the records of Pinnacle West or the
 18 Plan's Recordkeeper. Settlement, § 2.3. Defendants will mail the Notice to Class Members
 19 within forty-five (45) days after entry of the Preliminary Approval Order, or such other date
 20 as the Court may set in a Preliminary Approval Order. If a notice is returned as
 21 undeliverable, Defendants will use commercially reasonable means to find a current address
 22 and re-send the Notice. Settlement, § 2.3.

23 **V. ARGUMENT**

24 The Ninth Circuit strongly "favors settlements," particularly for "complex class
 25 action litigation." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019).
 26 Courts must approve class action settlements to protect the rights of absent class members.
 27 4 Newberg and Rubenstein on Class Actions § 13:10 (6th ed.). The first step is preliminary
 28

1 approval. *Id.* If the Court determines that it will likely be able to grant final approval, it
2 should grant preliminary approval and proceed to a full fairness hearing. *Id.*

3 **A. The Settlement Merits Preliminary Approval**

4 **1. Standard for Preliminary Approval**

5 Rule 23(e)(2) provides that a court may approve a proposed Settlement “only after a
6 hearing and only on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P.
7 23(e)(2). The parties must show that the proposed settlement is reasonable, with the Court
8 vigilant for even “subtle signs of collusion.” *In re Apple Inc. Device Performance Litig.*, 50
9 F.4th 769, 782-83 (9th Cir. 2022). The determination involves consideration of:

10 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity,
11 and likely duration of further litigation; (3) the risk of maintaining class
12 action status throughout the trial; (4) the amount offered in settlement; (5)
13 the extent of discovery completed and the stage of the proceedings; (6) the
experience and views of counsel; (7) the presence of a governmental
participant; and (8) the reaction of the class members to the proposed
settlement.

14 *Arrison v. Walmart Inc.*, No. CV-21-00481, 2024 WL 3413968, at *2 (D. Ariz. July 15,
15 2024) (Brnovich, J.).

16 “[M]any of these factors cannot be fully assessed until the final fairness hearing.” *Id.*
17 “Accordingly, at the preliminary approval stage, courts need only evaluate ‘whether the
18 proposed settlement (1) appears to be the product of serious, informed, non-collusive
19 negotiations, (2) has no obvious-deficiency, (3) does not improperly grant preferential
20 treatment to class representatives or segments of the class and (4) falls within the range of
21 possible approval.’” *Zwicky v. Diamond Resorts Mgmt. Inc.*, 343 F.R.D. 101, 119 (D. Ariz.
22 2022).

23 **2. The Proposed Settlement Was the Product of Arm’s Length** 24 **Negotiations**

25 The Parties’ central dispute is whether the assumptions used to calculate JSAs
26 generated actuarially equivalent benefits for Class Members. This case is a “battle of the
27 experts.” Plaintiffs’ expert opines the Plan’s assumptions did not generate actuarially
28

1 equivalent JSAs; Defendants’ expert opines that they did. The Parties rely on the same
2 experts their counsel have used in similar actuarial equivalence cases who have opined
3 about these same actuarial assumptions in the past. As in these prior cases, the Parties’
4 experts were thoroughly deposed about their opinions. Moreover, counsel for the parties
5 have previously litigated numerous similar cases against each other and are fully versed in
6 the strengths and weaknesses of these expert opinions and the strengths and weaknesses of
7 the case generally. Consequently, the parties were fully capable of engaging in, and did
8 engage in, robust arm’s length negotiations.

9 Nonetheless, the Settlement was not easily reached. It came only after an extensive
10 discovery process, including the production and analysis of over 40,000 pages of
11 documents, four depositions of Defendants’ fact witnesses, depositions of each of the three
12 Plaintiffs, and depositions of both Parties’ expert witnesses. Needham Decl. at ¶ 7-14. The
13 Parties had briefed and argued a motion to dismiss, including a motion for reconsideration,
14 and the Parties had fully briefed a motion for class certification. With the class certification
15 motion pending, the Parties conducted a mediation with Magistrate Judge Morton Denlow
16 (Ret.), who was formerly a Magistrate Judge for the Northern District of Illinois. Needham
17 Decl. at ¶ 12. Since joining JAMs in 2012, Judge Denlow has mediated settlements in
18 complex cases totaling \$1.9 billion, including more than 325 class action lawsuits. *Id.* The
19 Settlement is the result of Judge Denlow’s “mediator’s proposal,” which the Parties
20 evaluated and accepted two days after the initial day of mediation. *Id.* at ¶ 14.

21 The process used to reach the Settlement evidences there was not collusion. Courts
22 generally find that settlements reached with the help of a mediator to be non-collusive.
23 *Salazar v. Driver Provider Phoenix LLC*, No. CV-19-05760, 2024 WL 2923718, at *5 (D.
24 Ariz. June 10, 2024) (Brnovich, J.) (“presence of a neutral mediator weighs in favor of a
25 non-collusive process.”) citing *In re Bluetooth Headsets Prods. Liab. Litig.*, 654 F.3d 935,
26 948 (9th Cir. 2011)); *see also Estrada v. iYogi, Inc.*, CIV. NO. 2:13–01989, 2015 WL
27 5895942 (E.D. Cal. 2015) (preliminarily approving settlement negotiated before Judge
28 Denlow).

3. The Settlement has no “Obvious Deficiencies”

Courts in the Ninth Circuit must evaluate three “subtle signs” of obvious deficiencies that class counsel have pursued their own self-interests, known as “the *Bluetooth* factors: ‘(1) whe[ther] counsel receives a disproportionate distribution of the settlement; (2) whe[ther] the parties negotiate a clear-sailing arrangement, under which the defendant agrees not to challenge a request for an agreed-upon attorney's fee; and (3) whe[ther] the agreement contains a kicker or reverter clause that returns unawarded fees to the defendant, rather than the class.” *Zwicky*, 343 F.R.D. at 121 (citing *McKinney-Drobnis v. Oreshack*, 16 F.4th 594 (9th Cir. 2021).

The first *Bluetooth* factor is met. The Settlement states that the amount of Attorney’s Fees shall be determined by this Court, subject to an upper limit of one third of the value of the settlement. Settlement, § 1.9.³ In *Smart v. Nat’l Collegiate Athletic Ass’n*, No. 2:22-CV-02125, 2025 WL 1248794, at *8 (E.D. Cal. Apr. 30, 2025), the Court approved preliminary approval of a settlement agreement which similarly provided for fees “not to exceed 33.33% of the gross settlement amount.” Such approval is preliminary, and at final approval, Plaintiffs will support their request for fees with sufficient information for the Court to perform a lodestar cross-check. Moreover, the Settlement is not contingent upon approval of the fee request. Settlement, § 2.7.1; *Salazar*, 2024 WL 2923718, at *5 (approving settlement where “fee award will not impact the settlement’s finality”).

The second *Bluetooth* factor is met. Defendants have not expressly or impliedly agreed not to challenge Plaintiffs’ fee request. Decl. at ¶ 29.

The third *Bluetooth* factor is also satisfied. The Settlement does not contain a kicker or reverter clause. If approved, the Settlement will increase Class Members’ future monthly benefit payments. Each Class Member is already receiving payments from the Plan. The

³ The Settlement’s present value of \$7 million provides, for purposes of settlement analysis, a “common fund.” This is the appropriate methodology to use in a case that involves payment of annuity benefits. *See, e.g., Berube Order*, ¶ 10; *Herndon v. Huntington Ingalls Industries, et al*, No. 4:19-cv-52 (RCY), Dkts. 133, 137 (E.D. Va. May 10, 2022) (awarding percentage of present value of increased future benefits as attorney fees); *Sprint Approval* at 9 (same); *Cruz Final Order and Judgment* (same).

Settlement will not change how Class Members receive those payments. Each Class Member will receive their increased payments for the remainder of their lives and, for Participant Class Members, for the remainder of the lives of their surviving spouses. None of the Settlement will be returned to Pinnacle. The Settlement is non-reversionary.

4. The Settlement Treats All Class Members Equitably

Courts must evaluate whether a proposed class settlement “improperly grants preferential treatment to class representatives.” *Zwicky*, 343 F.R.D. at 123. Here, the amount each Class Member’s monthly payments will increase is proportional to the present value of the Class Member’s injury, according to the Plaintiffs’ theory. Settlement, §§3.1, 3.3, § 3.3.2 (Settlement allocation based on Class Member’s claimed loss relative to other Class Members. This formula is applied consistently and, in doing so, treats Class Members equitably relative to each other. *Salazar*, 2024 WL 2923718, at *7.

The Settlement also does not give the Class Representatives preferential treatment. Their benefit increases are calculated in the same manner as all other Class Members, and the actuarial assumptions used to calculate Class Members’ injuries (and thus their payment increases) were selected by Plaintiffs’ expert without regard to the effect it would have on the benefits of the class representatives.

Further, the Court must approve any Case Contribution Awards paid to the Class Representatives, with the awards capped at \$5,000 per representative. Settlement, §§ 1.13 and 2.6. These payments will compensate the class representatives for their time and dedication to this matter, including time searching for documents, evaluating drafts, preparing and sitting for depositions, and otherwise remaining available to Class Counsel to answer any questions. Decl. ¶¶ 7, 30. The total amount requested, which will be less than 0.22% of the Settlement’s present value of the Settlement, is reasonable as a percentage. *Zwicky*, 343 F.R.D. at 124 (incentive payments totaling 0.11% and 0.17% of total settlement were reasonable (citing *In re Online DVD-Rental Antitrust Litig.* 779 F.3d 934 (9th Cir. 2015))). This Court found service awards of \$20,000 each reasonable at preliminary

1 approval in *Salazar*. 2024 WL 2923718, at *7. And, as in *Salazar*, the Court may further
 2 scrutinize the awards at the final approval stage. *Id.*

3 **5. The Relief Obtained is Well Within the Reasonable Range**

4 “To determine whether a settlement ‘falls within the range of possible approval,’
 5 courts focus on ‘substantive fairness and adequacy’ and ‘consider plaintiffs’ expected
 6 recovery balanced against the value of the settlement offer.” *Salazar*, 2024 WL 2923718,
 7 at *7 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal.
 8 2007)). Settlements often “only amount to a fraction of the potential recovery.” *Id.* (quoting
 9 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir.1998)).

10 The key question in this case — whether Class Members’ JSA benefits were less
 11 than the actuarial equivalent of the SLAs that they could have selected — is one that could
 12 only be determined at trial through expert testimony. Accordingly, this case was a “battle
 13 of experts,” and the results of such battles are notoriously difficult to predict. Moreover, at
 14 the time of the settlement, class certification was hotly contested and unresolved, with
 15 courts split in similar cases. *Compare Urlaub v. CITGO Petroleum Corp.*, 348 F.R.D. 319,
 16 322 (N.D. Ill. 2024) (certifying class in actuarial equivalence case) with *Adams v. U.S.*
 17 *Bancorp*, No. 22-cv-509, Dkt. 173 (D. Minn. April 4, 2025) (denying certification in
 18 actuarial equivalence case).

19 Particularly in light of the risk that class certification could be denied, the proposed
 20 Settlement is an excellent result for the Class. The Settlement’s present value is \$7 million,
 21 which is one-third of the \$21 million in class-wide damages calculated by Plaintiffs’
 22 actuarial expert. Needham Decl., ¶ 8. This is an outstanding result considering the likelihood
 23 of further lengthy, expensive litigation and the risk that the Class would recover less — or
 24 possibly nothing at all. This result is comparable to the results in *Berube*, *Sprint* and
 25 *Holloway*, all of which were excellent results compared to other ERISA settlements.

26 ERISA class settlements involving statutory claims other than actuarial equivalence
 27 have been litigated much more frequently (and, thus, have more of a track-record) often
 28 settle for lower percentages of Plaintiffs’ asserted damages. *See, e.g., Toomey v. Demoulas*

1 *Super Markets, Inc.*, No. 1:19-cv-11633, Dkt. 95 at 10 (D. Mass. Mar. 24, 2021), *approved*
 2 Dkt. 100 (D. Mass. Apr. 7, 2021) (approving settlement that represented approximately 15–
 3 20% of alleged losses); *Beach v. JPMorgan Chase Bank, Nat’l Ass’n*, No. 17-cv-00563,
 4 Dkt. 211 (S.D.N.Y. May 20, 2020), *approved* 2020 WL 6114545, at *1 (S.D.N.Y. Oct. 7,
 5 2020) (approving settlement of 16% of alleged losses); *Velazquez v. Massachusetts Fin.*
 6 *Services Co.*, No. 17-11249 Dkt. 108 (D. Mass Dec. 5, 2019) (approving settlement for 29%
 7 of maximum damages); *Prince v. Eaton Vance Corp.*, No. 18-12098, Dkt. 57 (D. Mass Sept.
 8 24, 2019) (approving settlement for 23% of total damages); *Sims v. BB&T Corp.*, No. 15-
 9 732, 2019 WL 1993519, *2 (M.D.N.C. May 6, 2019) (\$24 million settlement representing
 10 19% of alleged damages); *Urakhchin v. Allianz Asset Mgmt. of Amer., L.P.*, No. 15-1614,
 11 2018 WL 8334858, *4 (C.D. Cal. July 30, 2018) (\$12 million settlement representing 17.7%
 12 of maximum alleged damages); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL
 13 2183253, at *6–7 (N.D. Cal. May 11, 2018) (approximately 10% of losses under Plaintiffs’
 14 highest model).

15 In the Ninth Circuit, courts have approved settlements of a much lower percentage
 16 of the potential recovery. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
 17 2000) (settlement of “roughly one-sixth of the potential recovery” “fair and adequate”);
 18 *Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 WL 8526982, at *7 (N.D. Cal. Dec.
 19 11, 2015) (approving settlement providing 10.7% of the potential recovery); *Roe v. Jose*
 20 *Torres L.D. Latin Club Bar, Inc.*, No. 19-CV-06088, 2020 WL 5074392, at *6 (N.D. Cal.
 21 Aug. 27, 2020) (approving settlement providing 7% of the potential recovery).

22 **B. The Class Should Be Preliminarily Certified for Settlement Purposes**

23 **1. Satisfies Rule 23(a)’s Requirements.**

24 **i. Numerosity**

25 A class satisfies the numerosity requirement if members are so numerous that joinder
 26 would be impracticable. Fed. R. Civ. P. 23(a)(1). “Generally, forty or more members will
 27 satisfy the numerosity requirement.” *McClure v. State Farm Life Ins. Co.*, 341 F.R.D. 242,
 28

249 (D. Ariz. 2022). Here, there are approximately 900 members of the proposed Class.⁴
 Needham Decl. at ¶ 19. Numerosity is satisfied. *McClure*, 341 F.R.D. at 249.

ii. Commonality

A proposed class satisfies Rule 23(a)(2)’s requirement if “there is at least one question of fact or law common to the class.” *McClure*, 341 F.R.D. at 250. “[C]ommonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 989 (D. Ariz. 2011) (citing *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)).

The lawsuit challenges the Plan-wide formula for calculating JSAs. Plaintiffs allege that the Class Members’ JSA benefits are not actuarially equivalent to the SLAs that Class Members were offered. As previously mentioned, the driver of Class Members’ harm is the actuarial assumptions used to generate JSA benefits. Accordingly, determining whether the application of those assumptions excessively reduced Class Members’ pensions will resolve a central issue in the case. This alone satisfies commonality. *McClure*, 341 F.R.D. at 250 (finding commonality satisfied because “each claim is based on a form contract and a uniform course of conduct towards each [class member].”).

Here, the Settlement resolves the Plaintiffs’ and Class Members’ common claims by accepting a portion of the alleged damages in exchange for a release of the common claims. Though amount of Class Members’ recoveries are not uniform, each will recover the same portion of their alleged damages. Settlement, § 3.3.5. Commonality is satisfied. *Saliba v. KS Statebank Corp.*, No. CV-20-00503, 2021 WL 2105608, at *3 (D. Ariz. May 25, 2021) (granting preliminary approval, finding commonality satisfied when the settlement resolved “the common questions Plaintiff contends underlie his claims.”).

iii. Typicality

Rule 23(a)(3) requires that “the claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “As long as the

⁴ The size of the proposed class is likely to increase, as Plan participants continue to retire and choose JSA benefits.

1 representative's claims are reasonably coextensive with those of absent class members, they
2 need not be substantially identical." *McClure*, 341 F.R.D. at 250.

3 Here, the Plaintiffs' claims are typical of those of the Class. They stem from the
4 Plan's formula used to calculate JSAs, which Plaintiffs allege generate lower benefits than
5 reasonable actuarial assumptions. The claims arising from these core facts are based on the
6 same legal theory: that Defendants violated ERISA's actuarial equivalence requirement in
7 29 U.S.C. § 1055(d). *Urlaub*, 348 F.R.D. at 325-26 (typicality satisfied where plaintiffs
8 alleged their JSAs were not actuarially equivalent to the SLAs they were offered); *McAlister*
9 *R&R*, 2023 WL 3620884, at *8 (same).

10 Moreover, "[t]he class-wide settlement renders Plaintiff's claims typical of the
11 Settlement Class because it uniformly and fairly resolves claims concerning the same set of
12 alleged practices, legal theories, and alleged harms. Rule 23(a)(3) is therefore satisfied."
13 *Saliba*, 2021 WL 2105608, at *3. As discussed previously, each Class Member's claims
14 will be resolved by a uniform Plan amendment. Rule 23(a)(3)'s typicality requirement is
15 satisfied.

16 **iv. Adequacy**

17 Rule 23(a)(4)'s adequacy requirement asks "(1) do the named plaintiffs and their
18 counsel have any conflicts of interest with other class members; and (2) will the named
19 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Bryant*
20 *v. Arizona Pipe Trades Pension Trust Fund*, No. CV-13-1563, 2015 WL 300385, at *7 (D.
21 Ariz. Jan. 22, 2015). "This inquiry has a tendency to overlap with the commonality and
22 typicality criteria of Rule 23(a)." *Id.* The named Plaintiffs and their proposed counsel satisfy
23 these criteria.

24 Here, Plaintiffs do not have any conflicts of interest with other Class members. As
25 discussed with respect to commonality and typicality, Plaintiffs' claims rise and fall on the
26 same facts and legal theories as those of all Class Members. Moreover, under the terms of
27 the proposed settlement, the Plaintiffs' claims will be resolved in the same manner as other
28 Class Members' claims – by receiving an identical portion of their alleged damages.

1 Plaintiffs actively and vigorously prosecuted this action on behalf of the Class.
 2 Needham Decl. ¶ 7. Among other things, Plaintiffs produced relevant documents and
 3 provided material information to counsel; reviewed filings including the Complaint before
 4 this case was filed; gathered documents in response to Defendants' document requests; gave
 5 deposition testimony; understand their roles as class representatives; and reviewed and
 6 accepted the terms of the Settlement. *Id.* at ¶ 30.

7 Plaintiffs propose to have Motley Rice, LLC ("Motley Rice") and IZARD Kindall &
 8 Raabe, LLP ("IKR") serve as Class Counsel, and Keller Rohrbach L.L.P. serve as local
 9 counsel. These firms have prosecuted the case to date, consulting with Plaintiffs and
 10 experts; investigated the claims; drafted a detailed complaint; successfully opposed a
 11 motion to dismiss; conducted discovery; negotiated litigation issues with opposing counsel;
 12 prepared a motion for class certification, and negotiated this settlement. *Id.* ¶¶ 31.

13 Proposed Class Counsel are well-qualified to represent the Class. Motley Rice and
 14 IKR have been class counsel in dozens of ERISA class actions around the country, including
 15 several other lawsuits challenging benefit calculations. Needham Decl. at Exs. B (Motley
 16 Rice Resume) and C (IKR Resume). Keller Rohrbach L.L.P. has been recognized in this
 17 district as "highly experienced class action counsel." *In re Arizona Theranos, Inc., Litig.*,
 18 No. 2:16-CV-2138, 2020 WL 5435299, at *11 (D. Ariz. Mar. 6, 2020).

19 Proposed Class Counsel also have no conflicts with the proposed Class. Needham
 20 Decl. ¶ 31. The proposed class satisfies Rule 23(a).

21 **2. The Class Satisfies the Requirements of Rule 23(b)(1) and (b)(2).**

22 A class that meets Rule 23(a)'s requirements may be certified if it satisfies one of
 23 Rule 23(b)'s requirements. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Here,
 24 the Settlement proposes that the Class should be certified under either Rule 23(b)(1) and/or
 25 (b)(2). Settlement, § 1.44. Certification of the class is appropriate under both subsections.

26 **i. Rule 23(b)(1)**

27 Rule 23(b)(1)(A) is satisfied where "prosecuting separate actions by or against
 28 individual class members would create a risk of . . . inconsistent or varying adjudications

1 with respect to individual class members that would establish incompatible standards of
 2 conduct for the party opposing the class.” Fed. R. Civ. P. 23(b)(1)(A). The rule is designed
 3 for cases “where the party is obliged by law to treat the members of the class alike . . . or
 4 where the party must treat all alike as a matter of practical necessity.” *Amchem*, 521 U.S. at
 5 614 (citation omitted). “Most ERISA class action cases are certified under Rule 23(b)(1).”
 6 *Coppel v. SeaWorld Parks & Ent., Inc.*, 347 F.R.D. 338, 367 (S.D. Cal. 2024) (citation
 7 omitted). Certification under Rule 23(b)(1) is appropriate in ERISA cases “because ERISA
 8 requires plan administrators to treat all similarly situated participants in a consistent
 9 manner.” *Alday v. Raytheon Co.*, 619 F. Supp. 2d 726, 736 (D. Ariz. 2008). This is true
 10 here. If the Court were not to certify a class, hundreds of class members would be left to
 11 raise separate claims and Defendants would face “a risk of ‘inconsistent or varying
 12 adjudications’”—including “contradictory rulings” about how to determine if Class
 13 Members received actuarially equivalent benefits.

14 Like in this case, the plaintiffs in *McAlister* alleged that MetLife’s pension plan
 15 failed to provide actuarially equivalent JSA benefits. *McAlister v. Metro. Life Ins. Co.*, No.
 16 18-CV-11229, 2023 WL 5769491, at *1 (S.D.N.Y. Sept. 7, 2023). The court concluded that
 17 class certification was appropriate under Rule 23(b)(1) because “the validity of the
 18 assumptions Defendants used in calculating the benefits offered under the Plan – as well as
 19 whether another set of assumptions is proper – are issues that apply to the class as a whole.”
 20 *Id.* at *8. The court further explained that certification under Rule 23(b)(1) was appropriate
 21 because, if “two courts came to different conclusions as to how the proposed class members’
 22 [Plan] benefits must be calculated, Defendants would face a conflict between treating Plan
 23 participants alike and complying with each separate court order.” *Id.* (citation omitted).

24 The *Urlaub* plaintiffs similarly alleged that the defendants failed to pay actuarially
 25 equivalent JSA benefits. *Urlaub*, 348 F.R.D. 319. The *Urlaub* court adopted the reasoning
 26 of *McAlister* and likewise certified the Class pursuant to Rule 23(b)(1). *Id.* at *6. Like in
 27 *Urlaub* and *McAlister*, Defendants are “entitled to consistent rulings regarding operation of
 28

1 the plan, and have a statutory obligation, as well as a fiduciary responsibility, to treat the
2 members of the class alike.” *Id.*

3 The proposed relief is likewise appropriate under Rule 23(b)(1) because it treats all
4 Class Members alike. It resolves all Class Members’ claims in a uniform way, for a uniform
5 percentage of the alleged damages and with a uniform release to the Defendants.

6 **ii. Rule 23(b)(2)**

7 Certification is proper under Rule 23(b)(2) when “a single injunction or declaratory
8 judgment would provide relief to each member of the class.” *Foster v. Adams & Assocs.,*
9 *Inc.*, No. 18-CV-02723-JSC, 2019 WL 4305538, at *3 (N.D. Cal. Sept. 11, 2019) *Foster*,
10 2019 WL 4305538, at *3. Rule 23(b)(2)’s requirements are “unquestionably satisfied when
11 members of a putative class seek uniform or declaratory relief from policies or practices
12 that are generally applicable to the class as a whole.” *Id.* (citing *Parsons v. Ryan*, 754 F.3d
13 657, 688 (9th Cir. 2014)).

14 Here, certification is warranted under Rule 23(b)(2) because Defendants use the
15 same actuarial assumptions to calculate each Class Member’s JSA benefit and Settlement
16 resolves each Class Member’s claim in a uniform manner. The injunctive relief the
17 Settlement provides, which requires Defendants to recalculate Class Members’ benefits, is
18 consistent Rule 23(b)(2). *Alday*, 619 F. Supp. 2d at 736 (certifying class under Rule 23(b)(2)
19 where “Defendant acted or refused to act on grounds applicable to the class, making final
20 injunctive relief or corresponding declaratory relief appropriate with respect to the class as
21 a whole”); *Foster*, , 2019 WL 4305538, at *8 (certifying class in ERISA case under Rule
22 23(b)(2) “Plaintiffs seek the same relief for all members of the class”); *Bryant*, 2015 WL
23 300385, * 9 (certifying class under (b)(2) in an ERISA case because the “primary remedy
24 sought” was declaratory relief).

25 **C. The Proposed Notice to Class Members is Adequate**

26 Class Members are entitled to notice of any proposed settlement and an opportunity
27 to object before it is finally approved by the Court. *See* Manual for Complex Litig. (Fourth),
28

§ 21.31. The Court should “direct notice in a reasonable manner to all class members who would be bound by the proposal. Fed. R. Civ. P. 23(c)(1)(B)).

Here the proposed method of notification is adequate. The proposed Notice, attached as Exhibit A to the Settlement, is clear and straightforward, providing Class Members with enough information to evaluate whether to object to the Settlement, as well as directions to the Settlement Website which will include further information. Notice, § IV. Notice will be provided by First Class Mail to the address Pinnacle West or its record keeper maintains for Plan related communications. Settlement, § 2.3. Class Members will not be required to submit a claim form or take any steps to receive the benefit of the Settlement. The Class Notice will also be posted to the Settlement Website. This proposed method of providing notice is adequate under Rule 23(c)(2). *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985) (holding that individual mailed notice which clearly describes the case and Class Members’ rights meets due process requirements); *Berube* Order, ¶ 9.

VI. PROPOSED SCHEDULE

Should this Court grant preliminary approval to the Settlement, the parties respectfully propose the following schedule for sending notice to the Settlement Class and scheduling a final approval hearing:

| <u>EVENT</u> | <u>SCHEDULED DATE</u> |
|--|--|
| Deadline for mailing Notice to Class members. | 45 days after entry of Preliminary Approval Order, or such other date as the Court may set in a Preliminary Approval Order |
| Motion(s) for, and memoranda in support of (i) Final Approval of Settlement and (ii) Attorneys’ Fees and Costs | 30 days before the final approval hearing; hearing to be set by the court. |
| Last day for objections to the Settlement to be filed with the Court and sent to counsel | 28 days before date set by Court for Final Approval Hearing |

| | |
|------------------------|---|
| Final Approval Hearing | At the convenience of the Court, not less than 120 days after entry of Preliminary Approval Order |
|------------------------|---|

VII. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully move that the Court provisionally certify the proposed Class for purposes of settlement pursuant to Rule 23(b)(1) and/or (b)(2), appoint plaintiffs as class representatives, appoint Motley Rice and IKR as Class Counsel and Keller Rohrback L.L.P. as local counsel pursuant to Rule 23(g), preliminarily approve the proposed Settlement, and approve the contents and method of distribution of the proposed Notice.

1 Dated: July 15, 2025

2 Respectfully submitted,

3 /s/ M. Zane Johnson

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